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SECRETARY, BOARD OF
OIL, GAS & MINING

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BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

UTAH CHAPTER OF THE SIERRA CLUB,
et al, Petitioners,

vs.

UTAH DIVISION OF OIL, GAS & MINING,
Respondents,

ALTON COAL DEVELOPMENT, LLC, and
KANE COUNTY, UTAH

Respondent/Intervenors.

**PERMITTEE'S OPPOSITION TO
PETITIONERS' MOTION FOR
INTRODUCTION OF DEPOSITION
TRANSCRIPTS AND POSTPONEMENT
OF POST-HEARING BRIEFING
SCHEDULE**

Docket No. 2009-019

Cause No. C/025/0005

Alton Coal Development, LLC ("Alton" or "Permittee"), objects to Petitioners' Motion for Introduction of Excerpts of Rule 30(b) (6) Deposition Transcripts Regarding Air Quality and Cultural Resources and to Petitioners' Motion for Postponement of Post-Hearing Briefing

Schedule. Petitioners' motions, filed on the day before closing briefs are due, should be dismissed by the Board as untimely, inconsistent with the record and contrary to the schedule agreed to by the Board and all parties.

All parties have agreed that the record is closed regarding both air quality issues and the cultural resources issues. On April 29, 2010, Ms. Buccino, on behalf of Petitioners, stated on the record, "We have nothing additional to present at this hearing on air quality." Informal Transcript of Hearing Proceedings, Docket No. 2009-019, Cause No. C/025/0005, Vol. 1 (April 29, 2010) (hereinafter "Transcript Vol. I"), at 141 In 23 to 24. Mr. Bennett, on behalf of Permittee, confirmed this understanding: "From a procedural standpoint, I am locking this issue now closed." Transcript, Vol. 1, at 144, In 5-6. Similarly, with respect to the cultural resources issue, Ms. Buccino stated, "The Petitioners are done with the presentation of evidence on the cultural resource issue." Informal Transcript of Hearing Proceedings, Docket No. 2009-019, Cause No. C/025/0005, Vol. II (April 30, 2010) (hereinafter "Transcript Vol. II") at 124, In 13-14. Mr. Bennett confirmed this understanding, "But again, I'm locking the proof at this point in time." Transcript Vol. II at 126, In 8-9.

Contrary to the representations of Petitioners, the motion to have the Board accept the Rule 30(b) (6) depositions made at the outset of the hearing on April 29, 2010, was waived by Ms. Buccino at the time the record was closed on air quality and cultural resource issues. Transcript Vol. I at p. 9, In 16 to 12 In 25; Transcript Vol. I at 137 In 10-138, in 15. Rather, the record shows that deposition inserts were to be submitted by Mr. Morris for the second hearing in May relating to geology and hydrology issues. Id. Mr. Morris clarified that in the first hearing (held on April 29-30, 2010), deposition testimony would be used only for purposes of impeachment:

Mr. Morris: "If it becomes necessary in our judgment as counsel to use them for purposes of impeachment during

this first hearing, then we would present them for that purpose.” Transcript Vol. I, p. 138 at In 10-13.


Ms. Buccino did not attempt to submit the deposition excerpts at the close of hearing on either the air quality or cultural resource issues and did not attempt to use the deposition testimony to impeach witnesses on these issues. Petitioners have waived their opportunity to file deposition testimony regarding the air quality and cultural resource portion of the hearing and their motion should be denied.

Further, at the end of the hearing on April 30, 2010, the Board and all parties agreed to a briefing schedule. Closing briefs are to be simultaneously filed on air quality and cultural resource issues by tomorrow, Wednesday, May 12, 2010, with rebuttals filed on Monday, May 17, 2010. This tight schedule allows the Board to review the briefs prior to the hearing next week but does not allow time for a further delay. The Petitioners’ motion to delay briefing filed on the eve of the deadline is untimely and should be denied.

In sum, Petitioners failed to move the admission of the 30(b) (6) depositions on air quality and cultural resources prior to the close of the record. This motion and the belated motion to delay briefing are untimely, fail to accommodate the Board’s schedule and should be denied and the deposition transcripts on these issues should not be admitted into the record.

Respectfully submitted this 11th day of May, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PERMITTEE'S
OPPOSITION TO PETITIONERS' MOTION FOR INTRODUCTION OF DEPOSITION
TRANSCRIPTS AND POSTPONEMENT OF POST-HEARING BRIEFING SCHEDULE was
sent via email and U.S. Mail, postage prepaid, this 11th day of May, 2010, to the following:

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